STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of D. S. DICE, Minor.

UNPUBLISHED
September 16, 2014

No. 320667
Midland Circuit Court
Family Division
LC No. 12-004107-NA

Before: MURRAY, P.J., and DONOFRIO and BORRELLO, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating respondent's parental rights to the minor in issue pursuant to MCL 712A.19b(3)(c)(*i*) (conditions leading to adjudication continue to exist), MCL 712A.19b(3)(c)(*ii*) (other conditions exist), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood of harm).[1] For the reasons set forth in this opinion, we affirm.

This appeal arises from the termination of respondent's rights to her minor child. The trial court assumed jurisdiction over respondent when she admitted to testing positive for controlled substances, she failed to properly supervise her children, and she was incarcerated on August 16, 2012, thereby leaving her children without proper care and custody. Respondent also admitted to having an ongoing substance abuse problem.

During the pendency of the case, respondent made some attempts to alter her behavior, however, she was unable to alleviate many of the underlying problems which led to the trial court taking jurisdiction over respondent and the minor children. On December 4, 2013, she tested positive for cocaine, and at various times during the proceedings she was not taking her prescribed medications and some medications were missing. Some of the missing medications had "street value," that is, they were easily marketable on the streets. Additionally, it was alleged that respondent gave prescription drugs to one of the minor children to sell. The guardian ad litem appointed for one of the children stated that the minor child was fearful that if returned to respondent, the drug dealing would begin anew.

[1] The child's legal father also had his parental rights terminated. He has not appealed.

Although respondent visited the minor children, there were numerous issues arising out of those visits. At times, the minor child would become sullen, angry and depressed. Other times, respondent would bring gifts which DHS workers informed her the minor child was not interested in receiving. Despite this, respondent continued this practice even though it upset the minor child. Additionally, though services were provided to respondent, her ability to learn from those services and develop more effective parenting methods was, at best, questionable.

On appeal, respondent first argues that the trial court erred in taking judicial notice of her daughter's 2009 delinquency case. This issue is not preserved for appeal because respondent did not make a request for "an opportunity to be heard as to the propriety of taking judicial notice or the tenor of the matter noticed" as provided under MRE 201(d). We review an unpreserved error for plain error affecting substantial rights. See *In re HRC*, 286 Mich App 444, 450; 781 NW2d 105 (2009).

We begin our analysis of this issue by noting that although petitioner asserts that the trial court took judicial notice of the file, such an assertion is questionable because the trial court merely stated that it was going to "recognize" the daughter's 2009 delinquency file. However, in order to fully analyze the arguments of the parties, for purposes of this appeal, we presume that the trial court effectively took judicial notice of the file.

The taking of judicial notice is discretionary, MRE 201(c); *Lenawee Co v Wagley*, 301 Mich App 134, 149; 836 NW2d 193 (2013), and can occur "at any stage of the proceeding," MRE 201(e). A court can sua sponte take judicial notice of an adjudicative fact that is "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." MRE 201(b). "[A] circuit judge may take judicial notice of the files and records of the court in which he sits." *Knowlton v City of Port Huron*, 355 Mich 448, 452; 94 NW2d 824 (1959). Here, both the termination case and a delinquency case involving the child in issue's older (and now adult) sibling were held in the Midland Circuit Court before the same family court judge presiding in the present case. The delinquency file was an appropriate subject for the trial court to take judicial notice of and there was no plain error.[2]

Next, respondent argues that the trial court erred in finding grounds for termination pursuant to MCL 712A.19b(3)(c)(*i*), (c)(*ii*), (g), and (j). To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established. *In re Trejo Minors*, 462 Mich 341, 355; 612 NW2d 407 (2000). We review for clear error a trial court's finding of whether a statutory ground for termination has been proven. MCR 3.977(K); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm

[2] Moreover, any error in the trial court's decision to take judicial notice of the daughter's delinquency case would have been harmless in light of the independent evidence supporting the termination of respondent's parental rights. See MCR 2.613(A); MCR 3.902(A).

conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *Id.* at 296-297.

The trial court terminated respondent's parental rights pursuant to MCL 712A.19(b)(3)(c)(*i*), which allows for termination if:

> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . :
>
> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Here, the initial dispositional order was entered on October 2, 2012 and termination occurred on February 18, 2014. Thus, more than 182 days elapsed since adjudication.

As previously stated, the conditions leading to adjudication included substance abuse, incarceration, and improper supervision. Respondent was provided with numerous services to rectify these conditions, including random drug screens, counseling, a psychological evaluation, parenting classes, and parenting time. The trial court found that respondent had made little, if any progress in any of these areas. Furthermore, it is undisputed that respondent tested positive for cocaine on November 26, 2013 and December 4, 2013. The trial court found that the November 26, 2013 drug screen was unreliable due to the circumstances surrounding the test. Though the circumstances were directly attributed to the actions of respondent, the trial court gave any benefit of the doubt to respondent. However, the validity of the December 4 drug test is undisputed. Thus, it is clear that one of the conditions leading to adjudication—substance abuse—has not been rectified. It is undisputed that respondent did not attend or complete any long-term residential substance abuse treatment as recommended.

Our review of the record evidence in this matter leads us to conclude that the trial court did not clearly err in finding MCL 712A.19(b)(3)(c)(*i*) applicable. Because only one ground for termination is required, *In re Olive/Metts*, 297 Mich App 35, 41; 823 NW2d 144 (2012), we decline to address respondent's arguments that the court erred in finding grounds for termination under the remaining subsections.

Respondent next argues the trial court erred in finding that termination of respondent's parental rights was in the child's best interests. We review the trial court's best-interest decision for clear error. *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *In re Moss Minors*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the

parent's home." *In re Olive/Metts Minors*, 297 Mich App at 41-42 (citations omitted). Further, if a child is placed with a relative, the trial court must expressly consider that as a factor when making a best-interest determination. *Id*. at 43.

In this case, the trial court, for good reasons, stressed that the child's permanency was a major priority. The trial court noted that respondent had received extensive services but had not demonstrated any consistent progress. The trial court concluded that respondent did not have the ability to even minimally parent. The record supports such a finding. Further, as previously stated, the trial court found that, based on the lawyer guardian ad litem's reports, the minor child was afraid to go back to respondent because the minor child thought respondent would continue the same type of behavior. The trial court observed that it too was afraid respondent would engage in the same type of behavior given her lack of progress. Accordingly, the trial court correctly concluded termination was in the child's best interests.

Although there was a bond between respondent and the child in issue, the record shows that respondent had failed to benefit from services. She tested positive for cocaine over 15 months after the case started, and was unable to demonstrate satisfactory parenting skills during parenting-time visits in spite of completing parenting classes. Further, she was unable to provide a realistic budget. Additionally, since the child had been in foster care, his physical condition improved, his diet improved, and his self-esteem improved. There was also testimony that the child's lack of permanence caused him anxiety. In fact, his counselor testified that he was happy about the possibility of starting a new life. On this record, the trial court did not err, and accordingly, respondent is not entitled to relief.

Affirmed.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Stephen L. Borrello